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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,830	02/13/2002	Sydney R. Rader	660005.94581	8008

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EXAMINER	
SHERRER, CURTIS EDWARD	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 03/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/074,830	RADER ET AL.	
	Examiner	Art Unit	
	Curtis E. Sherrer, Esq.	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09/22/03*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7 and 17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7 and 17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 is indefinite because the scope of the phrase "essentially no dry hop flavor components" is unknown. Specifically, it is unclear how much of said components are allowed to be present in the extracted hop solids.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims are rejected under 35 U.S.C. 102(b) as being anticipated by ().

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-7 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owades (U.S. Pat. No. 5,783,235) in view of Von Horst (U.S. Pat. No. 1,464,5200) or ANH (BE Pat. No. 197,012).

Owades teaches the use of spent hops for the production of a non-fermented malt beverage where the spent hops can be used as the sole source of hop flavoring or can be used in conjunction with a "hop character fraction." (Col. 7, line 47 to col. 8, line 27). Owades teaches that if the solid hop residue is used alone, more should be added than if used in conjunction with the hop character fraction. Owades does not teach using a hop extract that is a polar solvent (such as, water or ethanol) extract of the solid hop residue or its use in beer. While water or ethanol extracts of hop products are notoriously well known the following references are cited to support such well known processes.

Von Horst teaches the treatment of hops with ether, "which extracts the oil and most of the soft resin." Thereupon all the other components soluble in alcohol, including the hard resin and the remainder of the soft resin, are extracted with alcohol. The entire residues of the hops which contain the tanning principal, fats and other components soluble in water are treated by water and the extract then concentrated. (Page 1, lines 60-80). It is this last extract that is considered to anticipate the cited claimed extract.

Von Horst goes on to state that "[t]he aforementioned fist three extracts the products obtained from the residues of the hops are then mixed as desired for the various kinds of beer and then added to the wort. . . . . A mixture of the said different fractions is also added to the wort,

beer in the vat, or to the finished beer in order to either impart a special taste of hops to the beer . . ." (Page 1, lines 81-96).

ANH teaches the old and well known production of a hot water extract from hops that have previously been extracted using an organic solvent. This extract is called the tannin extract and contains water-soluble protein materials and carbohydrates. (Page 1 of translation). On page 3, it I stated that "[t]he hot water extract in fluid form must still contain water so that there is a risk of fermentation. This is why particularly in this case, it is necessary to tend toward the manufacture of granules." It would have been obvious to those of ordinary skill in the art to the extracts of Von Horst or ANH in the process of Owades as extracts are commonly created to reduce the mass of a flavor ingredient and prolong its shelf life. It would also have been obvious to use the extracts as the sole hopping ingredient in a fermented beverage as fermenting spent hopped worts is well known as disclosed by Von Horst or ANH.

As to adding the spent hop extract after fermentation, it is obvious to those of ordinary skill in the art to add the spent hop extract at any stage in the brewing process because selection of any order of performing process steps is prima facie obvious in the absence of new or unexpected results. *In re Burhans*, 154 F.2d 690, 69 USPQ 30 (CCPA 1946). Selection of any order of mixing ingredients is prima facie obvious. *In re Gibson*, 5 USPQ 230 (CCPA 1930).

Finally, Applicants' attention is invited to *In re Levin*, 84 U.S.P.Q. 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

> This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art

of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients which produces a new, unexpected, and useful function. *In re Benjamin D. White*, 17 C.C.P.A (Patents) 956, 39 F.2d 974, 5 U.S.P.Q. 267; *In re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 U.S.P.Q. 221.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer, Esq. whose telephone number is 571-272-1406. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Curtis E. Sherrer, Esq.
Primary Examiner
Art Unit 1761